HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. 1242 of 2003 (SS)

Subhash Chandra Pandey Vs. State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 17.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1242 of 2003 (SS)

Subhash Chandra Pandey S/o Sri Shyam Dutt Pandey
R/o Takana Band Near Saraswati Sadan,
Pithoragarh …… Petitioner

Versus

1. State of Uttaranchal
2. Commissioner, Food and Supply, Dehradun
3. District Magistrate, Pithoragarh ……..…… Respondents

Sri J.P. Joshi, Advocate for the petitioner
Standing Counsel for the Respondents.

Dated: October 17, 2003

Hon'ble Rajesh Tandon, J.

Present writ petition has been filed challenging the order passed by the respondents on 20.12.1992, 19.4.2003 and 28.4.2003 annexure 4, 10 and 11 of the writ petition.

Brief facts giving rise to the present writ petition are that petitioner was appointed as Junior Clerk in the year 1992 and after appointment he was given charge of Food Grain store at Dugtu, Tehsil Dharchula, District Pithoragarh. On 27.11.1995, the petitioner was served with a charge sheet. He submitted his reply on 4.12.1995, stating the fact that he is innocent and the charges leveled against him

are false. The proceedings initiated against the petitioner were mala fide and prejudicial in nature. The punishing officer did not place reliance on the reply filed by the petitioner and on 3.3.1997 he has issued a show cause notice to the petitioner. Reply of show cause notice was given by the petitioner on 4.3.1997. On 20.10.1997 punishment was awarded by the authority concerned.

Aggrieved by the aforesaid order, the petitioner has preferred Petition before the Public Service Tribunal, Lucknow. The Tribunal has passed the order on the statement put by the A.P.O. that the matter has become in fructuous as punishment order dated 20.10.1997 has been withdrawn. The order passed by the Tribunal is quoted below:

"Today when the matter came up for hearing, learned A.P.O. placed on record a copy of the order dated 22nd November 2002 passed by the Appellate Authority in service appeal setting aside the impugned punishment order. It is besides the point that the Department proposes to proceed afresh by issuing the show cause notice to the petitioner. The pertinent point, however, is that the particular order which was impugned in this petition does not exist any more. In view thereof, the petition becomes infructuous and is disposed of accordingly.

As will appear from the order of the Tribunal that when the matter came up for hearing it was pointed out that on 22.11.2002 the

appellate authority in Departmental appeal had set aside the impugned punishment order whereas from the order of the appellate authority it transpires that appeal dated 28.10.2002 by which petitioner was punished was set aside and petitioner was afforded another opportunity of explaining and in fact denovo hearing was directed to be afforded to the petitioner vide order dated 22.11.2002. The authority concerned has passed further order on 19.4.2003 by which a sum of Rs.98,873.56 was directed to be recovered from the petitioner.

The petitioner has preferred Departmental appeal, which has been annexed as annexure 12. The contention of the petitioner is that said Departmental appeal is pending and as such recovery proceedings against him cannot be initiated.

After hearing the learned counsel for the parties it is evident that the Departmental appeal is pending before the Commissioner and recovery proceedings have been initiated against the petitioner and as such interest of justice required that during the pendency of the appeal order in question should be stayed.

It is settled law that if the appeal is pending and impugned order involves civil consequences in as much as ultimately the fate of the appeal will depend upon the recovery proceeding, the same should be stayed. It has been held in the case of Mool Chand Yadav vs. Ram

Buland Sugar Co. Ltd. Rampur and others, 1983 A.W.C. 121 as under:

"Now if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav have to vacate the room and handover the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr. Manoj Swarup, learned advocate for respondents that the court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal."

Thus in view of the aforesaid facts and circumstances the writ petition is allowed. Recovery proceedings against the petitioner shall remain stayed pending disposal of departmental appeal. There will be no order as to costs.

17.10.2003 **(Rajesh Tandon, J.)**
*Dhyani